

**COMMITTEE ON RULES OF PROCEDURE
IN DOMESTIC RELATIONS CASES**

Wednesday, April 28, 2004 10:00 am – 3:00 pm

Arizona Courts Building

1501 W. Washington, Conference Room 345

Teleconference #: (602) 542-9006

Web Site: <http://www.supreme.state.az.us/drrc/>

Members Present:

Hon. Mark Armstrong, Chair

Annette T. Burns, Esq.

Hon. Norm Davis

Annette Everlove, Esq.

Deborah Fine, Esq. (Telephonic)

Bridget Humphrey, Esq.

Hon. Michael Jeanes

Phil Knox, Esq.

Hon. Dale Nielson

Debra Tanner, Esq.

Members Not Present:

Janet Metcalf, Esq.

Hon. John Nelson

Richard Scholz, Esq.

Robert Schwartz, Esq.

Brian Yee, Ph.D.

Staff Present:

Konnie K. Young, Esq.

Karen Kretschman, Esq.

Isabel Gillett

Member Represented by Proxy:

Hon. Karen Adam for

Hon. Nanette Warner

Quorum:

Yes

1. Call to Order: Hon. Mark Armstrong

After welcoming Committee members, introductions, and determination that there was a quorum, Judge Armstrong reviewed the new materials:

- Special Master Rule
- New Materials from Workgroups
- Workgroup Lists

Judge Armstrong noted that he would need to leave at 11:30 am, and workgroups could stay to meet after a short lunch break.

There was a motion to approve the minutes from the March 15, 2004 meeting.

**Motion: Minutes Approved.
Seconded**

Vote: Minutes Approved.

2. Special Master Rule:

Judge Armstrong said that Judge Davis would also address this rule in his workgroup report. Judge Armstrong stated that this rule arose as part of a compromise between proponents of a private judging law this session, our court, and the Supreme Court.

A court may appoint a special master to try a case, with some limited review to the Superior Court. Basically, this is the compromise (pilot program in Maricopa County) that was decided upon to avoid a special statute in the current legal session. This particular rule was drafted by Judge Campbell from Maricopa County Superior Court, with input from Judge Armstrong and Judge Davis and additional input from Jim McDougall. Judge Davis stated that the Special Masters section in the material from Workgroup 6 was slightly different than this rule. He said Jim McDougall went through it and made some minor syntax changes. Judge Armstrong stated that since those changes were all non-substantive, there was no need to be concerned about it. He has advocated to Dave to wait and just go through this pilot process. He stated that it would be better if we waited and did it through this process rather than try to do it as an amendment to Rule 53 now. Judge Armstrong told the group that the blue copy of the material that Judge Davis had provided was the most up-to-date.

3. Position Statement:

On the Form entitled Position Statement, Judge Armstrong stated that the term “position statement” was being changed to “proposed resolution statement,” as there were comments from mediators who did not like the term “position statement.” The members agreed.

Judge Davis made the comment that he thought it was important for the Forms Workgroup to review the forms to make sure they are correct.

4. Creation of New/ Remaining Workgroups:

Judge Armstrong directed members to look at the new workgroup list and stated that we would be forming new workgroups, including a forms workgroup, but not all of the groups would be formed today. He asked for volunteers to sign up for the next workgroups, and a few members volunteered for various sections: Judge Adam and Michael Jeanes volunteered for Workgroup 11 – Forms; Debra Tanner and Judge Davis volunteered for Workgroup 9 – Post-Judgment Proceedings; and Judge Nielson volunteered for Workgroup 7 – Trials. Judge Armstrong stated that we would continue working on this via e-mail over the next couple of weeks.

5. Reports from Workgroups:

a. Workgroup 2: Section I. General Administration (Judge Davis, Chair)

Judge Davis apologized for bringing up the Rules of Evidence again and proposed his revisions to Rule 2(b). He commented that most of the evidentiary issues we deal with are on documents that the court has ordered to be submitted, such as custody evaluations, drug test results, etc., or things that are required by court rule. Judge Davis feels that the Committee should at least address this issue in (b) “any reported document required by the court to be submitted to the court, may be considered as evidence by the court whether or not formally admitted into evidence,” as well as (e) “Any properly completed form document approved by rule _____ that is required by court order or rule to be filed with the court in conjunction with a particular trial or hearing may be considered by the court as evidence at that trial or hearing without formal admission into evidence.” Judge Armstrong stated that he believed that Judge Davis’ language was clearer and simpler. He also stated that the comment needed to be changed. The Committee decided to delete the existing Rule 2(b)(4) and add the new proposed parts 2(b)(4) and 2(b)(5) to rule 2(b).

b. Workgroup 3: Section V. Simplified (Uncontested) Proceedings (Annette Burns, Chair)

Annette Burns stated that she just had a couple of revisions for Rule 48 and that the changes were not substantial. She said she would meet with Konnie to revise Rule 48 in the Master Rules.

c. Workgroup 4: Section VI. Emergency and Temporary Orders (Judge Davis, Chair):

Judge Davis presented a proposed Temporary Orders section, and discussion ensued regarding the amount of 120% in the following statement: “If the party requesting child support is seeking an amount that is less than or equal to 120% of the amount of child support that the obligor is willing to pay, the Court may enter a summary temporary child support order within the range of the parties’ positions without further evidentiary hearing on the issues.” The Committee ultimately reached consensus to change the figure to 150%, and to change the amount from 110% to 125% where it states:

If such information is contested or not apparent from the court file, the court may enter a summary temporary order of child support equal to 110%.

**d. Workgroup 6: Section VIII. Settlement and Pretrial Resolution of Cases
(Judge Warner, Chair):**

Case Resolution and Management Conference (RMC), Preparation, and Matters to be Discussed

Judge Davis introduced his workgroup’s proposal for the Early Court Intervention section of the Rules. The intent of the conference would be to 1) require the parties to begin to sit down and talk about things and prepare a resolution statement; and 2) basically everything allowed in Rule 16 now.

Judge Davis said that the unique parts of this rule are in (a), (b) and (c). He said that (b) would allow the court to look at the resolution statements and see if there are some reasonable solutions that could be explored, and (c) would be Temporary Orders, which would allow any Temporary Orders the parties agree on after these discussions to be entered without an evidentiary hearing, unless the parties wanted an evidentiary hearing. Judge Davis said that much of this is taken from Rule 16.

Judge Davis stated that this could be set as an initial conference or as a follow-up in a complex case. The reason the workgroup wants to keep the words “settlement resolution” in the title is to encourage people that this is the time to resolve the case, as well as manage it. Judge Davis asked for comments, and Judge Armstrong said that he believed that this conference would take the place of some other matters that are being set, such as status conferences and review hearings, etc. He said that this would be the standard.

Judge Davis said that the term “Pre-trial Orders” was picked up from Rule 16(e). He stated that “Sanctions” is combined and reworded from what the Civil Rules provide. He thought it may need to be refined to think about the Family Court context. “Binding Agreements” has been reworked fairly significantly. This is the old 80(D) rule. It would require an agreement to be binding, that it must be in writing, which is the existing rule, or on the record under oath before a judge, commissioner, judge *pro tem*, or other person authorized by Local Rule or an Administrative Order to accept such agreements. Annette Everlove said she would like to see the Rule a little more expanded to include depositions. Judge Armstrong agreed. Discussion ensued, with the result that Annette would add some language to include deposition agreements under oath.

TASK: Annette will add language to include deposition agreements under oath.

Judge Davis said that “Notice of Settlement” was close to the Civil Rule. “Settlement Without Final Judgment” was adapted from Maricopa County’s 3.6(c). The “Voluntary Dismissal” rule is a combination of existing Rules 41(a) and (b), except that it has been streamlined.

Judge Davis stated that the “Special Masters” had not changed from the “Pilot Project Rule” (green handout) with the exception that Jim McDougall had made a few minor changes. The “Family Court Conference Officers” appointment is the old Rule 53(k), allowing the court to appoint conference officers to do various things. He stated that the last rule, “Local Rules of Superior Court” is already in there in Rule 13.

Judge Nielson asked if there was a time frame in these rules. Judge Armstrong replied that it was his understanding that the Committee had discussed this and decided that after a Motion for Temporary Orders has been made, that the conference be set immediately after this, or the evidentiary hearing; either one would be within 60 days. He said that was a compromise.

Position Statement

Judge Davis presented the Position Statement form which is intended to be used for each party to disclose specific positions on each of the issues in their case. Judge Armstrong asked if this was intended for use only in dissolution cases, and what if there were to be a paternity case. Judge Davis suggested doing one form for each. Judge Davis asked if we wanted to deal with this at this meeting. Judge Armstrong replied that we do need two separate forms, but that all of the forms from this Committee would be reviewed by the Forms Workgroup. Debra Tanner said that she will work on a paternity form, and that she would like to be a member of the Forms Workgroup.

TASK: Debra will produce a paternity form.

Debra also stated that she was in favor of a longer financial affidavit due to the fact that the abbreviated form does not meet the needs of IV-D cases. The Attorney General’s Office uses the financial affidavit to get information on self-employed parents, and for the basis of their ability to pay when there is a contempt hearing.

Judge Armstrong suggested that the name of the Position Statement be changed to “Proposed Resolution Statement.” Discussion ensued, and the Committee agreed to change the name to Proposed Resolution Statement.

At this time, Judge Davis suggested that Workgroups 6 and 7 be combined. He said that the issues of private mediation and ADR and Guardians *ad litem* and family assessments are all the same type of pretrial management activity, and that it at least needs to coordinate well. Judge Armstrong said that we will combine Workgroups 6 and 7 and designate Judge Warner as the chair. Debra Tanner stated that there were some members of Workgroup 6 who would not be interested in serving on the combined Workgroup. Judge Armstrong stated that any members from Workgroup 6 who do not want to continue in the combined Workgroup, may drop off.

Judge Davis stated that he had a rough draft of a disclosure rule for the low-end average case. He said he would bring it for the next meeting.

6. Ethics Opinion(s) for Limited Scope Representation:

Bridget stated that Pat Gerrich, at Community Legal Services and the Volunteer Lawyers' Program (VLP), said that the State Bar ethics opinion on limited scope representation had not been made public yet. Bridget will keep us posted when it goes public and there is something for her to report to the Committee.

7. Next Meeting:

Judge Armstrong stated that the next meeting will be held on May 17, 2004, 10:00 am – 3:00 pm, Arizona Courts Building, 1501 W. Washington, Conference Room 119. The conference call number is 602.542.9006.

8. Call to the Public:

There were no public members in attendance.

9. Adjournment of General Meeting: Judge Armstrong

Judge Armstrong adjourned the meeting at 11:25 am, and stated that workgroups were welcome to meet until 4:00 pm.

LUNCH

10. Workgroup Meetings

Some workgroups met following the adjournment of the general meeting.